

**Faribault Clinic, Ltd. and Minnesota Licensed Practical Nurses Association-Technical Employees Association of Minnesota (MLPNA-TEAM), Petitioner. Case 18-RC-15239**

July 31, 1992

**ORDER DENYING REVIEW**

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

The Board has delegated authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.<sup>1</sup>

<sup>1</sup> In denying review, we note, in addition to the factors cited by the Regional Director in support of his unit finding, that the Employer's technical work force is substantial in size, both in numbers and relative to the Employer's other nonprofessionals and its total staff.

**APPENDIX<sup>1</sup>**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit of all licensed practical nurses, medical secretaries, x-ray technologists, and laboratory technicians employed by the Employer at its clinic located in Faribault, Minnesota. The Employer, contrary to the Petitioner, contends that only a wall-to-wall unit of all

<sup>1</sup> The Employer's name appears as stipulated to by the parties in the record.

<sup>2</sup> The Employer, Faribault Clinic, Ltd., is a Minnesota corporation engaged in the operation of a full service medical clinic at its Faribault, Minnesota facility. During the last 12 months, a representative period, the Employer's gross revenues were in excess of \$250,000, and the Employer purchased and received at its Faribault, Minnesota facility goods and services valued in excess of \$50,000 from points located outside the State of Minnesota.

nonprofessional employees is appropriate, and thus requests the addition of number of primarily clerical and maintenance employees to Petitioner's proposed unit.

The Employer operates a full service medical clinic in Faribault, Minnesota. It has 19 physicians on staff, including specialists in pediatrics, urology, surgery, obstetrics, and ophthalmology. The physicians share ownership in the clinic in a partnership. New physicians work a one-year trial period, after which they either become partners or leave the staff.

The Employer employs one certified registered nurse, designated the nurse educator. The nurse educator frequently works outside the clinic; for example, at patients' homes. In consultation with the physicians, the nurse educator develops diet, exercise, and medication plans for patients whose condition requires such follow-up care and instructs those patients in the program. For example, she instructs patients found diabetic in how to monitor their blood sugar and inject themselves with insulin. Both parties agree that the nurse educator is a professional within the meaning of the Act and that this classification should be excluded from the unit. Based on that agreement, the variable and independent nature of the nurse educator's duties, and the nurse educator's education and certification requirements, I find the nurse educator is a professional employee and appropriately excluded from the unit.

The rest of the Employer's employees are classified administratively into four departments - nursing, laboratory (also known as ancillary services), medical records, and the business office. The nursing, laboratory, and medical records departments are separately and intermediately supervised and ultimately responsible to the Employer's assistant administrator; the business office employees are directly supervised by the assistant administrator.

The nursing department includes classifications of LPNs (of which there are currently about 21), ophthalmic technician (currently unoccupied), ophthalmic assistants (2), coding coordinator (1), and coding assistant (1). The LPNs are each assigned to work with a particular physician. They greet patients in the waiting rooms, prepare them for examinations, and assist the physicians as required. The ophthalmic technician and assistant perform similar services for the ophthalmologist. The coding coordinator and assistant compile and file patient records and work on bills and insurance claims. LPNs and the ophthalmic employees require state certification and CPR training; coding employees must have medical knowledge or experience, but have no specific education or training requirements.

The laboratory department includes classifications of MLT instructor (1), x-ray technologists (3), lab technicians (8), and laboratory secretary and assistant (2). The MLT instructor has a four-year degree in lab technology. The x-ray and lab technicians require lesser but substantial advanced education and certification. Functionally, the MLT technician performs the same tasks as other lab technicians; in addition, she is responsible for monitoring the other technicians' results and for periodic tests of the equipment. In the absence of the laboratory supervisor, the MLT instructor "take[s] over for her." The lab secretary and assistant are responsible for all lab paper work. They perform some of the simpler tests, but require no particular education or lab experience and are trained on the job.

The medical records department includes classifications of medical records transcriptionists (3-4), medical records clerks (4), medical secretary/receptionist appointments (2), and medical secretary/receptionists (4). The medical records transcriptionists are primarily responsible for transcribing dictation by the clinic's physicians. The medical records clerks are primarily responsible for filing and retrieving patient files, charts, and x-rays. The receptionists greet patients at the separate waiting areas. As for required experience and training, the Employer requires training for the transcriptionist, ("preferably" graduation from a medical secretary/transcriptionist program and medical secretary or LPN training for the receptionists. The Employer explained the requirement for the receptionists' training as a need for familiarity with medical terminology.

The business office includes classification of bookkeeper (1), insurance clerk (1), workers' compensation clerk (1), switchboard operator (1), billing clerks (cashiers) (2), registration clerks (2), appointments clerks (2), and computer operators (2). The registration clerk is the first to greet incoming patients, from there they are sent to separate waiting areas near the physicians' offices. The other positions in the business office are primarily engaged in paper work connected to scheduling patient appointments, billing, and processing of insurance claims and other third party reimbursements.

In addition to the above classifications, the Employer employs three maintenance employees. One functions frequently as a "concierge," opening the front door for incoming patients. All three perform custodial services and grounds maintenance.

All of the employees share similar benefits, break rooms, and bulletin boards and are subject to the same personnel policies. All are paid an hourly wage, except for the nurse educator, who is paid a salary. The clinic is open 8 a.m. to 5:30 p.m. weekdays and 9 a.m. to noon on Saturdays. Business office employees regularly work within those hours. LPNs, lab employees, and medical records employees work as long as physicians and patients remain in the building, sometimes after regular hours. One maintenance employee at a time works an afternoon shift extending several hours beyond closing.

Based on the foregoing and the record as a whole, I find a unit of technical employees substantially as proposed by the Petitioner to be appropriate. First, I find that the technical unit includes LPNs, x-ray technologists, laboratory technicians, MLT instructors and ophthalmic technicians and assistants, and excludes business office clericals, coding coordinators and assistants, laboratory secretaries and assistants, medical records transcriptionists, medical records clerks, medical secretaries/receptionists appointments and medical secretaries/receptionists.

LPNs are required to be state licensed as LPNs, and they are also certified in CPR. LPNs schedule and assist testing procedures and prepare patients for physicians' examinations with minimal supervision. X-ray technologists must complete radiologist technology training at an AMA approved school, be certified in mammography, and be qualified for registry with ARRT. They are expected to operate and maintain their equipment, including selection of technical factors on an individual patient basis with a minimum of supervision. Lab technicians must complete a two-year educational program

and achieve certification. They engage in the gamut of laboratory testing and invasive procedures such as drawing blood. Accordingly, I find these employees' work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training and they qualify as "technical." See *Lancaster Osteopathic Hospital Association*, 246 NLRB 600 (1979); *Middlesex General Hospital*, 239 NLRB 837 (1978).

The Union requested inclusion of the ophthalmic assistants and exclusion of the vacant ophthalmic technician classification. I find both must be included. The job descriptions for the two positions are substantially identical. While the job descriptions do not explicitly list prerequisites for the jobs, the testimony indicates that the qualifications for ophthalmic assistant are the same as for an LPN, and ophthalmic technician is a certified position requiring significant training and experience. The only difference between the technician and assistant appears to be that the technicians will have greater independent responsibility in conducting and recording eye tests. Both positions are expected to work with patients for the ophthalmologist in the same manner that the LPNs assist the other physicians. Both are also expected to attend nursing meetings and in-service training session and to substitute for LPNs when scheduling needs require. Accordingly I consider both ophthalmic and ophthalmic assistants to be technicals.

On the first day of hearing in this case, the Union requested inclusion of the MLT instructor. On the second day of hearing, the Union claimed the MLT instructor should be excluded as a professional or a supervisor. The Employer declined to take a position on either issue. I find the record fails to support the exclusion of the MLT instructor as either a professional or a supervisor.

The record demonstrates that the current MLT instructor has a four-year degree in laboratory technology, but that the degree was not a job requirement when she was hired. That degree prompted the Employer to delegate to the quality control functions formerly performed by her supervisor after about a year on the job. Quality control responsibility is the only thing that distinguishes the MLT instructor from the other laboratory technicians.

The current MLT instructor testified she is paid \$11.14 an hour. The Employer's published pay scale submitted in evidence shows the MLT instructor paid \$7.43 an hour to start, rising to \$9.07 an hour after five years. Lab technologists are scheduled to earn from \$6.01 an hour to start to \$8.70 an hour after five years. X-ray technologists are scheduled to earn \$11.41 an hour regardless of tenure.

The MLT instructor's quality control responsibilities apparently require somewhat greater exercise of independent judgment than the other lab technicians. I do not find the quality control function sufficient, however, to make the MLT instructor's job "predominantly intellectual and varied in character" or "of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time" within the meaning of Section 2(12) of the Act. Accordingly, I find the MLT instructor to be a technical employee like the other lab technicians.

The only evidence of supervisory authority consists of a cryptic answer to a single question of whether the current MLT instructor's job changes when her supervisor is absent. She answered, "I'm supposed to kind of just make sure that the lab is functioning properly if any problems come up - to kind of take over for her." There is no evidence of how frequently this occurs. There is also no evidence that the MLT instructor has authority to make decisions in the supervisory areas listed in Section 2(11) of the Act independently of higher authority, such as the assistant administrator, even in the absence of the lab supervisor. Accordingly, I cannot find the MLT instructor to be a supervisor and will include her in the technical unit.

I do not find that the medical records department clericals, coding clericals, or lab secretary or assistant qualify as technical employees. Petitioner required inclusion of the medical secretary/receptionist appointments and medical secretary/receptionist classifications on the grounds that their job descriptions require "medical secretary or licensed practical nurse training" and that some of the current receptionists are certified LPNs. The Employer's evidence, however, indicates that those requirements are intended to ensure familiarity with medical terminology, not any particular technical skills. The coding clericals' and medical records transcriptionist's descriptions require similar "medical knowledge," "formal training in CPT coding," and/or "medical transcriptionist training." The other positions require only clerical and personal skills. The testimony indicates that these employees perform exclusively clerical work, except for the lab secretary, who collects and processes specimens for drug testing and performs some simple tests such as EKGs. The lab secretary, however, has no technical training and learned her laboratory work on the job. I, therefore, conclude that the foregoing clerical employees do not have technical training and do not perform technical work.

Having determined the scope of the technical unit, I now turn to consideration of whether a unit limited to technical employees at this clinic constitutes an appropriate unit. In making this determination, I am guided by Board precedent in similar situations, the information gleaned by the Board in its rule-making proceedings concerning bargaining units in the health care industry, and the community of interest factors exposed in this record. *Park Manor Care Center*, 305 NLRB 872 (1991).

First, I find Board precedent on bargaining units outpatient clinics such as this one sparse. The Employer cited two in its brief, *Georgetown Dental Clinic*, 262 NLRB 698 (1982), and *Appalachian Regional Hosps. Inc.*, 233 NLRB 542 (1977). Both cases found appropriate broad units including technical employees and other non-professionals, and clericals. In each case, however, the petitioners sought the broad units found appropriate. Those cases are thus of minimal guidance when, as in this case, the petitioner seeks a more limited unit. In the health care industry as any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit - they need only select an appropriate unit. *Newington Children's Hospital*, 217 NLRB 793 (1975).

In the health care industry generally, the Board has historically recognized that units limited to technical employees are an appropriate unit. E.g., *Barnert Memorial Hospital Center*, 217 NLRB 775 (1975). In the Board's rulemaking on bar-

gaining units in the health care industry, it continued to recognize the unique interests of technical employees that generally make their separation appropriate. See *Collective Bargaining Units in the Health Care Industry*, 29 CFR 33900, 33918-33920 (Sept. 1, 1988).

A number of factors considered in the rule-making lend analogous support for finding the technical unit appropriate here. First, the higher education, training and licensing requirements and special skills, the hallmark of technical status, distinguish the technical unit in this case. With the exception of the lab secretary discussed above, the technical employees are the only employees who have significant contact with patients related to patient care. While some other employees have substantial patient contact, it is limited to compilation of clerical data.

Second, there is little cross training or interchange that occurs between the technical employees and other classifications. The majority of interchange and transfers in this clinic occurs between medical records clericals and business office clericals. The testimony indicates that one LPN currently works part time in medical records, but that is a temporary situation. The physician to which she is assigned is new and works only part time; the Employer has temporarily assigned her to work on records during slack times until the doctor's practice builds up enough to provide full-time employment. The testimony also indicates that one business office clerk works one day a week as an x-ray technician. That position, too, appears temporary as the incumbent has given notice; and the Employer expects to fill only the clerk position. Finally, while LPNs and other technicals routinely do some paper work such as entry of data in patients' files, there is no evidence that non-technicals reciprocally perform technical tasks, except as noted above.

Third, because of the training and skills factors noted above, the technical employees share a unique and limited career path and labor market. Both the medical records and business office clerical, with their more generally applicable clerical skills and training, likely have greater mobility outside the health care industry.

Concededly, certain factors suggest the appropriateness of a broader unit. For example, the wages of all employees are statistically similar (although the highest-paid classifications are technical employees). In addition, the technical unit does not conform to the Employer's departmental or supervisory lines. In its rule-making, the Board acknowledged that this was expected to differ from facility to facility. Finally, the testimony indicates that all the employees have frequent contact, both on breaks and while working. In the rule-making, the Board found technical employees generally have little contact with most employees in patient care areas or with service and maintenance employees. In this case, however, the technical employees are the patient care employees. They have contact in this case with their supporting clerical, a circumstance I suspect is common throughout the industry.

In light of these technicals' distinctive training, skills and licensing, and the fact that non-technicals do not share in the performance of the technicals' tasks, I conclude that requiring a broader unit would not "assure to employees the fullest freedom in exercising the rights guaranteed" by the Act. 29 U.S.C. 159(b).

Accordingly, I shall direct an election among employees in the following unit found appropriate:

All technical employees, including LPNs, laboratory technicians, MLT instructor, X-ray technologists, ophthalmic technicians, and ophthalmic assistants employed by the Employer at its Faribault, Minnesota facility; ex-

cluding office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.